

N.D.A.G. Letter to Marion (Dec. 27, 1988)

December 27, 1988

Mr. James L. Marion
Clerk, ND Board of Pardons
P.O. Box 5521
Bismarck, ND 58502-5521

Dear Mr. Marion:

Thank you for your December 12, 1988, letter inquiring whether N.D.C.C. § 12-48.1-02 authorizes the Parole Board to allow an inmate to participate in a work and/or education release program if that inmate was sentenced under N.D.C.C. §§ 12.1-32-01(1) or 12.1-32-02.1.

N.D.C.C. 12.1-32-01(1) provides:

Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony shall not be eligible to have his sentence considered by the parole board for thirty-years, less sentence reduction earned for good conduct, after his admission to the penitentiary.

N.D.C.C. § 12.1-32-02.1 establishes minimum terms of imprisonment to be served without benefit of parole for certain armed offenders.

Both of these statutory provisions prohibit only the parole of an inmate during the specified time periods. Although these provisions prohibit the parole board from exercising its function of granting parole, neither section prohibits the Parole Board from exercising other functions it may perform by operation of North Dakota state law.

N.D.C.C. § 12-48.1-02 permits the Parole Board to approve, disapprove, or defer action upon an application for participation in a work or educational release program that the warden has approved. In addition, that section requires the Parole Board and warden to prescribe rules of conduct and treatment for all inmates on release programs. The procedures set forth in N.D.C.C. § 12-48.1-02 do not involve the performance of the Parole Board's parole function. The penitentiary or state farm inmates who may participate in that program are not being released on parole by order of the board. Instead, they are merely being given the privilege of temporary release from incarceration for program participation.

A decision of the Parole Board to grant a temporary release under these programs is not a "parole," which would be in violation of the non-parole mandates of N.D.C.C. §§ 12.1-32-01(1) and 12.1-32.02.1.

I trust that I have adequately responded to your inquiry. Should you have further questions or comments concerning this matter, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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